

Maine Revised Statutes
Title 38: WATERS AND NAVIGATION
Chapter 3: PROTECTION AND IMPROVEMENT OF WATERS

§413. WASTE DISCHARGE LICENSES

1. License required. No person may directly or indirectly discharge or cause to be discharged any pollutant without first obtaining a license therefor from the department.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §28 (AMD) .]

1-A. License required for surface wastewater disposal systems. No person may install, operate or maintain a surface wastewater disposal system without first obtaining a license therefor from the department, except that the department may exempt or license by rule categories of storm water discharges to groundwater when the discharges will not have a significant adverse effect on the quality or classification of waters of the State. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A unless the rules are incorporated as amendments to existing rules that are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 219, §1 (AMD) .]

1-B. License required for subsurface wastewater disposal systems. A license to install, operate or maintain a subsurface wastewater disposal system is governed as set forth in this subsection.

A. A person may not install, operate or maintain a subsurface wastewater disposal system without first obtaining a license for the system from the department, except that a license is not required for systems designed and installed in conformance with the plumbing code, as adopted by the Department of Human Services under Title 22, section 42. [2003, c. 551, §5 (NEW) .]

B. The department may exempt or license by rule categories of subsurface discharges to groundwater in the same manner and using the same criteria as provided in subsection 1-A. [2005, c. 219, §2 (AMD) .]

[2005, c. 219, §2 (AMD) .]

2. Exemptions. A person is not considered in violation of this section for the discharge of rock, sand, dirt or other pollutants resulting from erosion related to agricultural activities, subject to the following conditions.

A. The appropriate soil and water conservation district has recommended an erosion and sedimentation control plan or conservation plan for the land where this erosion originates. [1983, c. 566, §16 (RPR) .]

B. The commissioner has certified that the plan meets the objectives of this chapter. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §28 (AMD) .]

C. The commissioner determines that the agricultural activities are in compliance with the applicable portion of the plan, or the soil and water district has certified that funds from existing federal and state programs are not available to implement the applicable portion of the plan. [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §28 (AMD) .]

D. After the State receives authority to grant permits under the Federal Water Pollution Control Act, this exemption will not apply to any discharges considered point sources under federal law, including discharges from concentrated animal feeding operations and discharges from silvicultural point sources, as defined by federal law. [1997, c. 794, Pt. A, §12 (NEW).]

[1997, c. 794, Pt. A, §12 (AMD) .]

2-A. Exemptions; pesticide permits.

[1979, c. 281, §3 (RP) .]

2-A. Exemptions.

[1979, c. 296, §2 (AMD); 1979, c. 663, §229 (RP) .]

2-A. Exemptions; pesticide permits.

[1979, c. 541, Pt. B, §69 (RPR); 1979, c. 663, §229 (RP) .]

2-B. Exemptions; snow dumps. The department may by rule license categories of snow dumps when the activity would not have a significant adverse effect on the quality or classifications of the waters of the State, except there may be no snow dumps directly into the fresh surface waters of the State.

[1997, c. 794, Pt. A, §12 (AMD) .]

2-C. Dredge spoils. Holders of a permit obtained pursuant to the United States Clean Water Act, Public Law 92-500, Section 404, are exempt from the need to obtain a waste discharge license for disposal of dredged material into waters of the State when the dredged material is disposed of in an approved United States Army Corps of Engineers disposal site. Disposal of all dredged materials is governed by the natural resource protection laws, sections 480-A to 480-S.

[1989, c. 656, §1 (AMD) .]

2-D. Exemptions; road salt or sand-salt storage piles. The commissioner may exempt any road salt or sand-salt storage area from the need to obtain a license under this section for discharges to groundwaters of the State when the commissioner finds that the exempt activity will not have a significant adverse effect on the quality or classifications of the groundwaters of the State. In making this finding, the commissioner's review must include, but is not limited to, the location, structure and operation of the storage area.

Owners of salt storage areas shall register the location of storage areas with the department on or before January 1, 1986. As required by section 411, the department shall prioritize municipal or quasi-municipal sand-salt storage areas prior to November 1, 1986.

New or existing salt or sand-salt storage areas registered after October 1, 1999 may be exempt from licensing under this section as long as such areas comply with siting, operational and best management practices adopted by rule by the department. Storage areas other than those owned by municipalities or counties and registered prior to October 1, 1999 are exempt from licensing under this section as long as such areas comply with section 451-A, subsection 1-A and with operational and best management practices adopted by rule by the department. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Storage areas owned by the Department of Transportation and registered prior to October 1, 1999 are not in violation of best management practice rules adopted by the department pursuant to this subsection if the Department of Transportation complies with the reporting requirements in section 451-A.

[2003, c. 502, §1 (AMD) .]

2-E. Exemptions; pesticide permits.

[1997, c. 794, Pt. A, §13 (RP) .]

2-F. Exemption; aquaculture. Until the State receives authority to grant permits under the Federal Water Pollution Control Act, 33 United States Code, 1982, a person may not be considered in violation of this section if:

A. The discharge activity is associated with off-shore marine aquaculture operations in the estuarine and marine waters; and [1987, c. 769, Pt. A, §173 (NEW).]

B. As a condition of obtaining a leasehold from the Department of Marine Resources, the Department of Environmental Protection certifies that the aquaculture activities mentioned in this subsection will not have a significant adverse effect on water quality or violate the standards ascribed to the receiving waters' classifications. [1987, c. 769, Pt. A, §173 (NEW).]

[1997, c. 794, Pt. A, §14 (AMD) .]

2-G. Exemptions; oil and hazardous substances spill response. A license is not required under this section for the following discharges:

A. A discharge to groundwaters of the State that occurs in the process of recovering, containing, cleaning up or removing an oil or hazardous substance spill or leak if discharge complies with the instructions of the commissioner or the commissioner's designee; or [1995, c. 493, §2 (NEW); 1995, c. 493, §21 (AFF).]

B. A discharge to surface waters of the State that occurs in the process of recovering, containing, cleaning up or removing an oil or hazardous substance spill or leak if the discharge complies with the instructions of an on-scene coordinator pursuant to 40 Code of Federal Regulations, Part 300. [1997, c. 794, Pt. A, §15 (AMD).]

[1997, c. 794, Pt. A, §15 (AMD) .]

3. Transfer of ownership. Application for transfer of a license must be made no later than 2 weeks after the transfer of ownership or interest in the source of the discharge is completed. If a person possessing a license issued by the department transfers the ownership of the property, facility or structure that is the source of a licensed discharge, without transfer of the license being approved by the department, the license granted by the department continues to authorize a discharge within the limits and subject to the terms and conditions stated in the license, except that the parties to the transfer are jointly and severally liable for any violation until such time as the department approves transfer or issuance of a waste discharge license to the new owner. The department may in its discretion require the new owner to apply for a new license, or may approve transfer of the existing license upon a satisfactory showing that the new owner can abide by its terms and conditions.

Except when it has been demonstrated within 5 years prior to a transfer, or some other time period acceptable to the department, that there is no technologically proven alternative to an overboard discharge, prior to transfer of ownership of property containing an overboard discharge, the parties to the transfer shall determine the feasibility of technologically proven alternatives to the overboard discharge that are consistent with the plumbing standards adopted by the Department of Health and Human Services pursuant to Title 22, section 42 based on documentation from a licensed site evaluator provided by the applicant and approved by the Department of Environmental Protection. The licensed site evaluator shall demonstrate experience in designing replacement systems for overboard discharge. If an alternative to the overboard discharge is identified, the alternative system must be installed within 90 days of property transfer, except that, if soil conditions are poor due to seasonal weather, the alternative may be installed as soon as soil conditions permit. The installation of an alternative to the overboard discharge may be eligible for funding under section 411-A.

This subsection applies to overboard discharge licenses issued before September 1, 2010.

[2011, c. 121, §1 (AMD) .]

3-A. Transfer of ownership, significant expansion, division and public sewer connection. Beginning September 1, 2010, if property containing an overboard discharge is transferred or a significant action is proposed, the following procedures apply. For purposes of this subsection, "significant action" means a single construction project performed on a primary residence with an overboard discharge when the total material and labor cost of the construction project exceeds \$50,000. "Significant action" does not include construction that makes the residence accessible to a person with a disability who resides in or regularly uses the residence or reconstruction performed in response to an event beyond the control of the owner, such as a hurricane, flood, fire or the unanticipated physical destruction of the residence.

A. Application for transfer of an overboard discharge license must be made no later than 2 weeks after the transfer of ownership or interest in the source of the discharge is completed. If a person possessing a license issued by the department transfers the ownership of the property, facility or structure that is the source of a licensed discharge without transfer of the license being approved by the department, the license granted by the department continues to authorize a discharge within the limits and subject to the terms and conditions stated in the license as long as the parties to the transfer are jointly and severally liable for any violation thereof until such time as the department approves transfer or issuance of a waste discharge license to the new owner. The department may in its discretion require the new owner to apply for a new license or may approve transfer of the existing license upon a satisfactory showing that the new owner can abide by its terms and conditions. [2011, c. 121, §2 (AMD) .]

B. If there is a transfer, or if a significant action is proposed, the owner of an overboard discharge must conduct an alternatives analysis and may be required to remove the overboard discharge system as provided in this paragraph.

(1) Except when it has been demonstrated within 5 years prior to a transfer, or some other time period acceptable to the department, that there is no technologically proven alternative to an overboard discharge, prior to transfer of ownership of property containing an overboard discharge, the parties to the transfer shall determine the feasibility of technologically proven alternatives to the overboard discharge that are consistent with the plumbing standards adopted by the Department of Health and Human Services pursuant to Title 22, section 42.

(2) Except when it has been demonstrated within 5 years prior to the significant action, or some other time period acceptable to the department, that there is no technologically proven alternative to an overboard discharge, prior to the significant action the owner of the overboard discharge shall determine the feasibility of a technologically proven alternative to the overboard discharge that is consistent with the plumbing standards adopted by the Department of Health and Human Services pursuant to Title 22, section 42.

(3) The determination concerning whether there is a technologically proven alternative to an overboard discharge must be based on documentation from a licensed site evaluator provided by the applicant and approved by the Department of Environmental Protection that the system constitutes a best practicable treatment under section 414-A, subsection 1-B. If an alternative to the overboard discharge is identified, the alternative system must be installed within 180 days of property transfer or significant action, except that, if soil conditions are poor due to seasonal weather, the alternative may be installed as soon as soil conditions permit. The installation of an alternative to the overboard discharge may be eligible for funding under section 411-A. On a property transfer, a commercial establishment may request an extension of the 180-day period based on information that an extension is necessary due to technical, economic or environmental considerations. The department may authorize an extension for a commercial establishment for as short an additional period as the department considers reasonable but in no case may an extension be authorized to continue beyond the expiration of the current waste discharge license or 2 years from the property transfer, whichever is later. Within 10 business days of receipt of a complete extension request, the department shall issue a written decision approving or denying the extension.

(4) When the ownership of a property containing an overboard discharge has been transferred, the transferee may request from the department a waiver from the requirement in subparagraph (3) to install an alternative system. The department shall grant the waiver upon demonstration by the transferee that the transferee's annual income as defined in section 411-A, subsection 2-A is less than \$25,000. A request for a waiver must be submitted with an application for transfer of the overboard discharge license in accordance with paragraph A.

Nothing in this paragraph requires a municipality to withhold a local permit or approval associated with a significant action until the provisions of this paragraph have been met. [2011, c. 121, §2 (AMD) .]

C. An overboard discharge must be removed without regard to available funding from the department where connection to a public sewer is practicable. [2009, c. 654, §4 (NEW) .]

[2011, c. 121, §2 (AMD) .]

4. Conditions for licensing.

[1973, c. 450, §10 (RP) .]

5. Registration of discharges exempted from licensing.

[1973, c. 450, §10 (RP) .]

6. Unlicensed discharge. If after investigation the commissioner finds any unlicensed discharge, the commissioner may notify the Attorney General of the violation without recourse to the hearing procedures of section 347-A. The Attorney General shall proceed immediately under section 348.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §28 (AMD) .]

7. Tidal waters and subtidal lands. In connection with a license under sections 414 and 414-A, whenever issued, the department may grant to a licensee a permit to construct, maintain and operate any facilities necessary to comply with the terms of that license in, on, above or under tidal waters or subtidal lands of the State. This permit may be issued upon such terms and conditions as the department determines necessary to insure that the facilities create minimal interference with existing uses, including a requirement that the licensee provide satisfactory evidence of financial capacity, or in lieu thereof, a bond in such form and amount as the department may find necessary, to insure removal of such facilities. In the event that the facilities are no longer necessary in order for the licensee or successor thereof to comply with the terms of its license, the department may, after opportunity for notice and hearing, require the licensee or successor to remove all or any portion of the facilities from the tidal waters or subtidal lands. This removal may be ordered if the department determines that maintenance of the facilities will unreasonably interfere with navigation, the development or conservation of marine resources, the scenic character of any coastal area, other appropriate existing public uses of such area or public health and safety, and that cost of this removal will not create an undue economic burden on the licensee or successor.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §28 (AMD) .]

8. Treated wastewater.

[1997, c. 794, Pt. A, §16 (RP) .]

9. Emergency public water utility license.

[1997, c. 794, Pt. A, §17 (RP) .]

10. Marine aquaculture projects. After the State receives authority to grant permits under the Federal Water Pollution Control Act, 33 United States Code, 1982, the department may issue to an owner of a marine aquaculture project a license for the discharge of pollutants to those waters only if the following conditions are satisfied:

- A. An application for a leasehold has been accepted as complete by the Department of Marine Resources and a copy of an approved leasehold is provided to the department prior to any discharge of pollutants; [1997, c. 794, Pt. A, §18 (NEW).]
- B. The project will not have a significant adverse effect on water quality or violate the standards of the receiving water's classification; [1997, c. 794, Pt. A, §18 (NEW).]
- C. The project will be managed and monitored in accordance with a program approved by the Department of Marine Resources; [1997, c. 794, Pt. A, §18 (NEW).]
- D. The project is not located in waters classified as SA under section 465-B, subsection 1; and [1997, c. 794, Pt. A, §18 (NEW).]
- E. Other applicable requirements of this chapter are met. [1997, c. 794, Pt. A, §18 (NEW).]

A license issued pursuant to this subsection is void if water quality is significantly affected by the project.

For the purposes of this subsection, an aquaculture project is a defined managed water area that uses discharges of pollutants into that designated area for the maintenance or production of harvestable plants or animals in estuarine or marine waters.

[1997, c. 794, Pt. A, §18 (NEW) .]

11. Mercury. A facility discharging mercury into the waters of the State shall make reasonable progress to develop, incorporate and continuously improve pollution prevention practices and implement future economically achievable improvements in wastewater technology in order to reduce that facility's dependence upon mercury products, reduce or remove discharges of mercury over time and help in the restoration of the waters of the State. The department shall establish and may periodically revise interim discharge limits, based on procedures specified by rule, for each facility licensed under this section and subject to this subsection in order to reduce the discharge of mercury over time and achieve the ambient water quality criteria established in section 420, subsection 1-B. Notwithstanding section 420, subsection 1-B or section 464, subsection 4, paragraph F, a facility discharging mercury shall at all times meet the interim limits established under this subsection.

A. A discharge limit for mercury may not be less stringent statistically than an interim limit established by the department pursuant to Chapter 519 of rules adopted by the department, effective February 5, 2000, and must be based on recent data appropriate for the facility. A facility with such an interim limit shall comply with that limit unless the department establishes a different interim limit. [2001, c. 418, §1 (NEW).]

B. A facility that discharges mercury shall implement a pollution prevention plan consistent with requirements of the department. The department may require that the prevention plan be periodically updated.

(1) The facility shall submit a copy of the pollution prevention plan to the department and the copy must be made available for viewing upon request by a member of the public. The facility shall provide information concerning the status of implementation of the pollution prevention plan to the department as required by the department.

(2) The facility shall monitor for mercury and provide the monitoring information to the department as required by the department. [2001, c. 418, §1 (NEW).]

C. The department may adjust an interim discharge limit for mercury upward or downward upon its own action or at the request of a licensee based upon factors such as additional monitoring data, reduction in flow due to implementation of a water conservation plan, seasonal variations, increased atmospheric deposition and changes in levels of production. [2001, c. 418, §1 (NEW).]

D. The department may approve an application and establish an interim discharge limit for a new or expanded discharge of mercury after the effective date of this paragraph only if:

- (1) An opportunity for public participation is provided;
- (2) The discharge will not result in a significant lowering of existing water quality with respect to mercury; and
- (3) The action is necessary to achieve important economic or social benefits to the State. [2001, c. 418, §1 (NEW).]

E. [2001, c. 418, §1 (NEW); T. 38, §413, sub-§11, ¶ E (RP).]

F. Notwithstanding this subsection, whenever the commissioner finds that a danger to public health exists due to mercury concentrations in any waters of the State, the commissioner may issue an emergency order to all facilities discharging to those waters prohibiting or curtailing the further discharge of mercury and compounds containing mercury into those waters. These findings and the order must be served in a manner similar to that described in section 347-A, subsection 3 and the parties affected by that order have the same rights and duties as are described in section 347-A, subsection 3. [2001, c. 418, §1 (NEW).]

G. A facility may not directly or indirectly discharge to a publicly owned treatment facility any concentration of mercury that contributes to the failure of the treatment facility to comply with interim effluent limits or applicable ambient water quality criteria for mercury. The owner of a publicly owned treatment facility may require any user of that facility, except for a residential source, to institute measures necessary to abate discharges of mercury to that facility. Those measures may include, but are not limited to, testing to determine concentrations of mercury, institution of pollution prevention practices or the evaluation of raw materials, products or practices. The owner of a publicly owned treatment facility may establish reasonable time schedules for completion of those measures. A facility that does not comply with abatement measures required by an owner of a publicly owned treatment facility may be subject to enforcement actions taken by the department or the owner of the facility and sanctions imposed by applicable municipal ordinances or section 349. [2001, c. 418, §1 (NEW).]

[2001, c. 418, §1 (NEW).]

SECTION HISTORY

1969, c. 499, §9 (AMD). 1971, c. 461, §3 (AMD). 1971, c. 618, §12 (AMD). 1973, c. 139, (AMD). 1973, c. 450, §§7-10 (AMD). 1973, c. 788, §§208,209 (AMD). 1975, c. 770, §209 (AMD). 1977, c. 271, §4 (AMD). 1977, c. 300, §16 (AMD). 1977, c. 373, §32 (AMD). 1979, c. 281, §3 (AMD). 1979, c. 296, §2 (AMD). 1979, c. 380, §2 (AMD). 1979, c. 444, §3 (AMD). 1979, c. 472, §13 (AMD). 1979, c. 541, §§B69,B70 (AMD). 1979, c. 663, §229 (AMD). 1983, c. 566, §§16,17 (AMD). 1985, c. 479, §4 (AMD). 1987, c. 235, (AMD). 1987, c. 318, §3 (AMD). 1987, c. 372, (AMD). 1987, c. 394, §1 (AMD). 1987, c. 769, §§A172-A175 (AMD). 1989, c. 656, §1 (AMD). 1989, c. 890, §§A40,B28 (AMD). 1993, c. 333, §1 (AMD). 1995, c. 493, §2 (AMD). 1995, c. 493, §21 (AFF). 1997, c. 794, §§A12-18 (AMD). 1999, c. 387, §4 (AMD). 2001, c. 418, §1 (AMD). 2003, c. 246, §6 (AMD). 2003, c. 502, §1 (AMD). 2003, c. 551, §5 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 219, §§1,2 (AMD). 2007, c. 292, §18 (AMD). 2009, c. 654, §§3, 4 (AMD). 2011, c. 121, §§1, 2 (AMD).

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